

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES,

Plaintiff,

v.

ANTONIO ESQUIVEL,

Defendant.

Case No. 3:19-CR-00028-MMD-CLB

**ORDER DENYING MOTION TO
RECONSIDER DETENTION AND
GRANTING REQUEST FOR JUDICIAL
NOTICE**

[ECF Nos. 139, 142]

Currently pending before the Court is Defendant Antonio Esquivel's ("Esquivel") "motion for reconsideration" of the Court's detention order due to his claim that there has been a substantial change in circumstances. (ECF No. 139). Plaintiff, the United States, (hereinafter "the Government") opposed the motion, (ECF No. 140). Esquivel did not file a reply brief. The Government also filed a request for judicial notice related to the transcript of the detention hearing, (ECF No. 142), which the Court grants. For the reasons stated below, the Court denies Esquivel's motion for reconsideration.

I. BACKGROUND

A. Procedural History

Esquivel was indicted on May 23, 2019, with three counts of Distribution and Possession with Intent to Distribute Methamphetamine and Fentanyl and one count of Conspiracy to Possess with Intent to Distribute Methamphetamine and Fentanyl in violation of various federal laws. (ECF No. 1). Esquivel was indicted in the same case as his father, Alejandro De Jesus Mora, a.k.a. Antonio Esquivel Mora ("Mora") and Yesenia Garcia ("Garcia"). Ultimately, an amended arrest warrant was issued for Esquivel on February 13, 2020, clarifying Esquivel's identity, because he and his father have used the same name. (See ECF Nos. 29, 30, and 31).

Mora and Garcia were arrested on April 11, 2019. However, for over two years, the United States Marshals Service attempted to locate Esquivel to no avail. (ECF No.

1 140-1). Ultimately, on June 4, 2021, Esquivel was arrested in Sallisaw, Oklahoma
 2 following a traffic stop. (See ECF No. 140-2). On June 9, 2021, Esquivel made an initial
 3 appearance before a magistrate judge in the Eastern District of Oklahoma pursuant to
 4 Federal Rule of Criminal Procedure 5. (ECF No. 99-1 at 2). At that hearing, Esquivel
 5 waived his right to a detention hearing in the Eastern District of Oklahoma and requested
 6 his detention hearing be held in the District of Nevada. (*Id.* at 9, 12). The magistrate judge
 7 in the Eastern District of Oklahoma granted this request and ordered the United States
 8 Marshals Service to transport Esquivel to the District of Nevada for further proceedings.
 9 (*Id.* at 13).

10 On July 1, 2021, approximately one month after his arrest, Esquivel appeared in
 11 the District of Nevada for his initial appearance, arraignment, and plea. (ECF No. 101).
 12 Prior to the hearing, an attorney on the Court's Criminal Justice Act ("CJA") panel was
 13 contacted in assist in Esquivel's representation. At the hearing, the CJA attorney informed
 14 the Court that Esquivel had "retained" counsel, who had not yet made an appearance.
 15 Despite this, the CJA attorney confirmed she was prepared to represent Esquivel for
 16 purposes of his initial appearance, arraignment, and plea. Based on this information, the
 17 Court continued Esquivel's detention hearing for another week to allow retained counsel
 18 to make their appearance and prepare for the hearing. (*Id.*) Several days later, on July 7,
 19 2021, Sean Neahusan entered an appearance on Esquivel's behalf in this case. (ECF
 20 No. 106).

21 **B. Detention Hearing**

22 Esquivel's detention hearing took place on July 9, 2021. (ECF No. 111). Prior to
 23 the continued detention hearing, Pretrial Services provided a report to the Court and the
 24 parties detailing extensive information related to Esquivel's background, criminal history,
 25 financial circumstances, and the like.¹ As part of the investigation, Pretrial Services

26
 27 ¹ Pretrial Services Reports are not filed on the public docket due to the confidential
 28 nature of the information contained in those records. However, Pretrial Services provided
 its reports to the Court, which it reviewed in preparing this order.

1 interviewed Esquivel's girlfriend. In addition to providing information related to Esquivel's
2 residence and living situation, Esquivel's girlfriend provided Pretrial Services with alleged
3 "earning receipts" from casinos that alleged confirmed Esquivel earned thousands of
4 dollars in gambling and to explain why Esquivel was in possession of a large sum of
5 money at the time of his arrest.

6 At that hearing, the Government moved for detention. (ECF No. 141 at 5-7). First,
7 the Government argued detention was appropriate because the rebuttal presumption of
8 detention applied due to the charges. (*Id.* at 5.) Moreover, the Government underscored
9 the various facts and circumstances related to Esquivel's arrest, prior history criminal
10 history, and other facts that supported his detention pending trial. With respect to the
11 circumstances surrounding Esquivel's arrest, the Government explained there was an
12 indication that Esquivel was not entirely cooperative, and a narcotics K-9 positively alerted
13 on the vehicle driven by Esquivel – indicating that over two years after he was indicted
14 Esquivel was may have again been in possession of narcotics. (*Id.* at 6-7.) Moreover,
15 although narcotics were not ultimately located in the vehicle, the arresting officers did
16 locate \$11,000 in Esquivel's possession at the time of the arrest. (*Id.*) The Government
17 also argued it was highly unlikely that Esquivel did not know about the outstanding warrant
18 for his arrest, given that his father is his co-defendant and had been arrested in 2019. (*Id.*
19 at 5.) Thus, an inference could be drawn that Esquivel posed a risk of non-appearance
20 given his ability to evade arrest for two years. Finally, the Government provided a
21 description of the facts underlying the offenses in this case, which included the sale of
22 large volumes of fentanyl and methamphetamine. (*Id.* at 8-9.)

23 In response, Esquivel's attorney admitted that the nature and circumstances of the
24 offense weighed in favor of detention. (*Id.* at 11). In fact, Esquivel's attorney conceded
25 that Esquivel's claim he did not know about the outstanding arrest warrant was "dubious"
26 given his father's arrest. (*Id.* at 12.) However, Esquivel's counsel argued that he was not
27 a flight risk, and he should be released pending trial based on his family ties and other
28 factors. (*Id.* at 11-13.)

1 In ruling on the motion for detention, the Court expressly noted that this case
2 triggers a presumption of detention due to the charged crimes. (*Id.* at 14.) The Court then
3 considered and reviewed all the required factors under 18 U.S.C. § 3142(g) in making its
4 ruling. (*Id.* at 15-21.) First, the Court determined that the factors all weighed in favor of
5 detention, including the nature and circumstances of the offense, the weight of the
6 evidence, and Esquivel's history and characteristics. The Court specifically noted that it
7 did not believe Esquivel was unaware of the outstanding warrant given that his father and
8 cousin, who are the co-defendants in this case, were both arrested over two years before,
9 and his cousin had already entered a guilty plea. The Court also considered Esquivel's
10 lack of employment, his claim that the large sum of cash was from "casino earnings", and
11 whether his girlfriend would be a proper third-party custodian. Ultimately, after considering
12 all of the evidence—including the casino earnings—and factors, the Court found that
13 Esquivel should be detained pending trial and no conditions or set of conditions could be
14 set to address these issues.

15 **C. Motion for Reconsideration**

16 Esquivel has now filed a "motion for reconsideration" of the Court's detention order
17 based on what he claims is "changed circumstances." (ECF No. 139). The only "changed
18 circumstances" alleged by Esquivel are copies of casino earnings he claims prove that
19 the cash in his possession at the time of his arrest were proceeds from his gambling and
20 documents that appear to relate to Esquivel's prior employment. (*Id.* at 3.)

21 The Government opposed the motion. (ECF No. 140). First, the Government
22 argues that this motion appears to be an untimely attempt to appeal the magistrate judge's
23 detention order and should be rejected. However, to the extent the Court may consider
24 the merits of the argument or to re-open detention, the Government argues that the prior
25 information provided to the Court coupled with additional information related to his
26 activities leading up to his indictment (including several border crossings and
27 inconsistencies with the information provided to Pretrial Services prior to the original
28 detention hearing), fully support detention in this case. (*Id.*)

II. DISCUSSION

Esquivel's motion indicates that it was filed pursuant to 18 U.S.C. § 3145(c). (ECF No. 139.) The Court agrees with the Government, that to the extent Esquivel is attempting to "appeal" the prior order of detention, it appears to be untimely. However, as Esquivel claims that he filed this motion based on "changed circumstances," it is appropriate for the magistrate judge to consider these changed circumstances in the first instance. Therefore, the Court construes Esquivel's motion as a motion to re-open detention pursuant to 18 U.S.C. § 3142(f)(2), as opposed to an appeal.

A. Legal Standard – Motion to Reopen

"A person lawfully committed to pretrial detention has not been adjudged guilty of any crime. He has had only a judicial determination of probable cause as a prerequisite to [the] extended restraint of [his] liberty following arrest." *Bell v. Wolfish*, 441 U.S. 520, 536 (1979) (internal quotations omitted). The government may detain someone on a federal offense to ensure his presence at trial and may subject him to the restrictions and conditions of detention so long as those conditions do not constitute punishment or otherwise amount to a constitutional violation. *Id.* at 536-37.

The Bail Reform Act ("BRA") of 1984 mandates every person charged with a federal offense be given a detention hearing. 18 U.S.C. § 3142(a). The fundamental precept of the BRA mandates the release of individuals so long as the court can reasonably be assured the defendant does not pose a flight risk or danger to the community. 18 U.S.C. § 3142. To the extent that conditions, or a combination of conditions, can be fashioned to reasonably provide for such assurances, the individual must be released, as detention is "the carefully limited exception." *Id.*; see also *United States v. Salerno*, 481 U.S. 739, 755 (1989). If the judge finds the defendant poses a danger to public safety or a flight risk, the defendant may be ordered detained. 18 U.S.C. § 3142(f).

However, section 3142(f)(2) permits a judicial officer to reopen a detention hearing at any time before trial if the judicial officer finds that information exists that was not known

1 to the movant at the time of the detention hearing and that has a material bearing on the
2 issue of whether there are conditions of release that will reasonably assure the
3 appearance of such person and the safety of any other person and the community.
4 Courts interpret this provision strictly. *United States v. Bararia*, No. 2:12-cr-00236-MMD-
5 GWF, 2013 WL 1907782, at *4 (D. Nev. Mar. 12, 2013); e.g., *United States v. Ward*, 63
6 F.Supp.2d 1203, 1206-07 (C.D. Cal. 1999); *United States v. Dillon*, 938 F.2d 1412, 1415
7 (1st Cir. 1991). The rule requires the movant, whether prosecutor or defendant, establish:
8 (1) that information now exists that was *not known to the movant* at the initial detention
9 hearing; and (2) the new information is material to release conditions regarding flight or
10 dangerousness. *Id.*; see also *United States v. Bowens*, 2007 WL 2220501 (D. Ariz. Jul.
11 31, 2007) (citing *United States v. Hare*, 873 F.2d 796 (5th Cir. 1989)).

12 Generally, once a detention hearing is reopened, it is reopened to allow the court
13 to receive any information, within reason, not submitted at the initial hearing, allowing the
14 new information to be considered in context. *Id.* If the information was available at the
15 time of the original hearing, the detention hearing need not be reopened. *United States*
16 *v. Turino*, 2014 WL 5261292, at *1 (D. Nev. Oct. 15, 2014) (citing *Ward*, 63 F.Supp.2d at
17 1206).

18 **B. Analysis**

19 The only “changed circumstances” identified by Esquivel with respect to his motion
20 are documents related to casino earnings, which allegedly explain why Esquivel had
21 \$11,000 in cash found in his possession at the time of his arrest and some documents
22 related to Esquivel’s sporadic employment prior to his arrest. Esquivel claims that the
23 documents he submitted prove he obtained the money in his possession through
24 gambling and that he had prior employment. He argues this documentary evidence is
25 new and therefore supports a “changed circumstance” that would support re-opening
26 detention.

27 However, the information identified by Esquivel is not information that was
28 “unknown” to Esquivel at the time of the original detention hearing. In fact, the information

1 related to his alleged casino winnings was not only known to Esquivel at the time of the
2 original detention hearing, but it was also known to Pretrial Services and the Court. The
3 same is true of Esquivel's prior employment history. The Court considered this
4 information, along with various other facts and circumstances, in reaching its detention
5 decision. Therefore, this information does not support a basis to reopen detention as it is
6 neither new information, nor does it materially change the detention decision. As such,
7 Esquivel has failed to establish that new information has become available to him that
8 was unavailable to him at the time of the original detention hearing, which has material
9 bearing on the issue of detention. Therefore, Esquivel's motion to reopen detention fails
10 on this basis alone.

11 However, even if the Court were to assume that these documents did somehow
12 support reopening detention, the motion must still be denied because this evidence would
13 not change the Court's analysis or determination with respect to detention. In fact, if the
14 Court reopened detention for consideration of this information, the Court would also
15 consider the new information provided by the Government. This new information further
16 supports and, in fact, strengthens the Court's determination that detention was and
17 remains proper in this case.

18 Here, even if the money in Esquivel's possession at the time of his arrest was
19 obtained through gambling and not other illicit activities, the Government's additional
20 evidence appears to show a substantial number of border crossings by Esquivel over
21 several years prior to his arrest. This information was not known to the Court or Pretrial
22 Services at the time of the original hearing, and it underscores that Esquivel's foreign ties
23 are far more extensive than previously known. In fact, at the time of the initial detention
24 hearing, Esquivel merely claimed that he had an "enhanced driver's license" that allowed
25 him to travel outside the United States. However, there is no mention of his extensive
26 travel to and from Mexico in the years leading up to the indictment.

27 In addition, when interviewed by Pretrial Services, Esquivel claimed he lived
28 exclusively with his girlfriend in California in the year prior to his arrest in June 2021,

1 although he could not recall the address. However, his girlfriend's statements contradict
2 this information. Specifically, his girlfriend stated Esquivel split his time between living
3 with her in California for three to four weeks at a time and then he would allegedly return
4 to Washington. Pretrial Services could not verify this information with Esquivel's mother
5 or anyone else who lived in Washington at that time.

6 However, based on new information submitted by the Government, it appears this
7 information was also false. Esquivel's mother, who lived in Washington, was interviewed
8 by law enforcement on or around January 2021 in the United States Marshals Service
9 efforts to locate Esquivel. (ECF No. 140-1 at 3.) This interview took place a few months
10 before Esquivel's arrest—during the time frame that Esquivel's girlfriend claimed he would
11 go to Washington. In her interview, Esquivel's mother stated that she "had not heard from
12 [her son] in over a year" and the last she heard, he was living in Michoaca'n, Mexico. (*Id.*)
13 She also claimed she had no way to contact him. (*Id.*)

14 Moreover, during his interview with Pretrial Services, Esquivel claimed that prior to
15 his arrest in June 2021, he spoke with his two children, who lived with their mother in
16 Washington, daily. However, his children's mother was also interviewed by the Marshals
17 in January 2021. During this interview, she also stated she had not talked to Esquivel "in
18 over a year," she had no way to contact him, and if he did contact her, she would **not**
19 contact law enforcement. (ECF No. 140-1 at 2.)

20 These facts contradict the information Esquivel provided to Pretrial Services at the
21 time of the detention hearing. Specifically, this information undermines his claims of close
22 family ties based on his relationship with his children and further underscores his
23 additional foreign ties and ability to evade law enforcement. In fact, this information
24 appears to support an inference that Esquivel may have been going somewhere other
25 than Washington during the intervals that he was not in California with his girlfriend—such
26 as Mexico. This information also supports the Court's prior determinations that Esquivel
27 likely knew of the pending arrest warrant prior to his arrest and was successful in eluding
28 law enforcement for over two years. This information, coupled with Esquivel's extensive

1 ties to Mexico and the contradictory information provided by Esquivel and his girlfriend to
2 Pretrial Services and the information his family provided during the investigation into his
3 whereabouts, further strengthen and support this Court's finding that he poses a risk of
4 non-appearance. Moreover, given the contradictory information and the inferences that
5 can be drawn of Esquivel's evasion, it does not appear that any of these individuals would
6 be suitable third-party custodians, the homes of his current girlfriend or other family
7 members would not be suitable if he were released, and location monitoring would likely
8 be ineffective given Esquivel's prior history of evasion.

9 Therefore, even if the Court were to re-open detention and considered the new
10 evidence presented by the parties, the Court finds that the evidence establishes that
11 Esquivel poses both a risk of flight and danger to the community and there is no condition
12 or combination of conditions that could be set to assure his appearance or the safety of
13 the community in this case.

14 **III. CONCLUSION**

15 **IT IS THEREFORE ORDERED**, for all the reasons stated above, Esquivel's motion
16 for reconsideration, (ECF No. 139), is **DENIED**.

17 **IT IS FURTHER ORDERED** that the Government's motion request for judicial
18 notice, (ECF No. 142), is **GRANTED**.

19 **IT IS SO ORDERED.**

20 **DATED:** October 26, 2021.

21 
22 **UNITED STATES MAGISTRATE JUDGE**